



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 175979

PRELIMINARY RECITALS

Pursuant to a petition filed on August 2, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on September 14, 2016, by telephone.

The issue for determination is whether the respondent correctly denied petitioner's prior authorization request for the medication dronabinol.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.

2. On May 11, 2016, the petitioner with CVS Pharmacy requested approval for the drug dronabinol to treat petitioner's migraines and associated nausea. The Division of Health Care Access and Accountability denied her request on June 21, 2016.
3. Dronabinol, a synthetic form of delta-9-THC, is used to treat nausea.
4. The petitioner is a 16-year-old girl who has severe chronic headache with associated severe nausea due to hydrocephalus and multiple ventriculoperitoneal shunt revisions.
5. The Department has determined that all uses of dronabinol other than treatment of HIV/AIDS patients with anorexia or cancer patients experiencing nausea or vomiting associated with chemotherapy is experimental.

DISCUSSION

The petitioner is a 16-year-old girl who requests authorization under Wis. Admin. Code, § DHS 107.10(2) for dronabinol to treat her nausea, vomiting, and weight loss associated with her chronic migraines and nausea. Dronabinol is a synthetic form of delta-9-THC.

Medical assistance only covers a requested treatment if the recipient proves that it is medically necessary, effective, and appropriate. Wis. Admin. Code § DHS 107.02(3)(e). A treatment is not medically necessary if it is "experimental." Wis. Admin. Code, § DHS 101.03(96m)(b)5; *see also* Wis. Admin. Code, § DHS 107.03(4). A treatment is experimental if the Department, after a review, determines it is not "a proven and effective treatment for which it is intended or used." Wis. Admin. Code, § DHS 107.0035(2). The Department's review looks at the following:

- (a) The current and historical judgment of the medical community as evidenced by medical research, studies, journals or treatises;
- (b) The extent to which medicare and private health insurers recognize and provide coverage for the service;
- (c) The current judgment of experts and specialists in the medical specialty area or areas in which the service is applicable or used; and
- (d) The judgment of the MA medical audit committee of the state medical society of Wisconsin or the judgment of any other committee which may be under contract with the department to perform health care services review within the meaning of s. [146.37](#), Stats.

The Department has determined that dronabinol is experimental unless it is for HIV/AIDS patients with anorexia or cancer patients experiencing nausea or vomiting because of chemotherapy. Cancer patients must also demonstrate that they have not responded adequately to conventional antiemetic treatments. Nothing in Wis. Admin. Code, § DHS 107.035, grants the Division of Hearings and Appeals authority to reverse the Department's conclusion. The only issue I can determine is whether the Department has in fact found that treatment of the petitioner's nausea with dronabinol is experimental. The rationale behind deferring to the Department's finding was explained by ALJ Brian Schneider in *DHA Decision No. MPA/140827*:

This result only makes sense. The Division of Hearings and Appeals does not have the expertise to review medical treatises and other such documentation to determine if the department's review and determination were correct. It is up to the medical community to convince the department that the service should be removed from the "experimental" designation.

The petitioner and her provider contend that although she does not receive chemotherapy, the chronic migraines and nausea affect her appetite in same way chemotherapy drugs do, and that she takes dronabinol for the same reason as those taking it for an approved use do: to prevent nausea and improve her appetite. Petitioner's mother is a nurse, and testified very credibly that this is the first and only medication that has successfully addressed petitioner's migraines and nausea. She stated that petitioner started taking the drug in March and has not been back to the hospital since then. She also noted that Illinois has approved this drug, and questioned why Wisconsin has not.

I note that Wisconsin has, in fact, approved use of this drug; it has not, however, approved dronabinol to treat petitioner's diagnoses. Dronabinol has not been approved to treat general nausea or migraine problems, or even those problems related to nausea caused by prescription medication. The petitioner does not have cancer or AIDS. Based upon this, I must find that regardless of how much good dronabinol does her, I lack the authority to overturn the respondent's finding that it is experimental for the requested use. Therefore, the respondent's denial is upheld.

CONCLUSIONS OF LAW

The respondent correctly denied the petitioner's request for dronabinol because its use to treat the petitioner's condition is experimental.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of October, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 24, 2016.

Division of Health Care Access and Accountability